

9 Official Opinions of the Compliance Board 268 (2015)

- ◆ 2(A) NOTICE: FAILURE TO PROVIDE, VIOLATION
- ◆ 6(B)(3) MINUTES: FAILURE TO PREPARE, VIOLATION
- ◆ 6(B)(1) MINUTES: MAY BE AMENDED TO ENSURE ACCURACY
- ◆ 7(G) TRAINING REQUIREMENT: A NEWLY CREATED PUBLIC BODY IS NOT REQUIRED TO DESIGNATE TRAINEE BEFORE ITS FIRST MEETING

*Topic numbers and headings correspond to those in the Opinions Index (2014 edition) at http://www.oag.state.md.us/Opengov/Openmeetings/OMCB_Topical_Index.pdf

August 24, 2015

Re: Heroin and Opioid Task Force
Michele J. Fluss, *Complainant*

Michele J. Fluss, Complainant, alleges that the Heroin and Opioid Emergency Task Force, a public body subject to the Open Meetings Act,¹ violated the Act by failing to give notice of its March 4, 2015 meeting, by meeting anyway and thus effectively violating the Act's requirement that meetings be open to the public, and by failing to keep minutes of the meeting. When Complainant submitted her first set of allegations in this matter, the Task Force had not designated an employee, member, or officer to take the training required by the Act, and Task Force staff had advised her that its meetings would not be open to the public.

The Task Force's response assumes correctly that the Task Force is a "public body" subject to the Act,² concedes that no notice was given for the

¹ The Act is codified as Title 3 of the General Provisions Article of the Maryland Annotated Code (2014), and the statutory citations in this opinion are to that article.

² The Act applies to "public bodies," a term defined by the Act to include multi-member entities that are created by an executive order, § 3-301(h)(1), and the Task Force was created by an executive order. See COMAR 01.01.2015.12. The term "public body" also includes entities that are appointed by the Governor, or an official subject to the Governor's policy direction, and have at least two members who are not State employees. See § 3-301(h)(1), (2)(i).

March 4 meeting and that no minutes have been adopted, denies that the meeting was closed to the public, states that staff had incorrectly advised Complainant that none of the Task Force's meetings would be open, and informs us that the staff whom it designated on April 20 to take training in the Act has now done so. The Task Force additionally states that it has posted notices and adopted minutes for its subsequent meetings, and it draws our attention to its website. The website does not mention the March 4 meeting, and the minutes of the March 17 meeting, a regional "summit," refer to that event as the Task Force's "first meeting." The Task Force has provided Complainant with an agenda for the March 4 meeting, briefing documents, and information on the attendees. The agenda categorizes the meeting as an "Internal Task Force Meeting."

As the Task Force has conceded, it violated the Act when a quorum of its members met to discuss public business without providing the public with the "reasonable advance notice" required by the Act. *See* § 3-302(a). The failure to inform the public of the meeting also violated the Act's mandate that meetings be held in "open session"; as the Compliance Board has stated often, a meeting that the public does not know about is not an open meeting. *See, e.g., 8 OMCB Opinions* 76, 79 (2012) ("The notice provisions of the Act are not merely technical; a meeting held without notice to the public is a secret meeting."). The perception that the March 4 meeting was intentionally closed was not helped by staff's initial statement to Complainant that the Task Force's meetings would not be public, and the perception of secrecy is not helped by the description, in the March 17 meeting minutes, of the March 17 event as the Task Force's "first meeting."

To date, the Task Force's failure to adopt minutes of the March 4 meeting also violates the Act, which requires public bodies either to have written minutes prepared "as soon as practicable" after they meet, or otherwise, to provide minutes in the form of "live and archived video or audio streaming of the open session." § 3-306(b). Although it is too late for the Task Force to meet the timeliness aspect of the requirement, it is not too late to adopt minutes of the session, and we encourage the Task Force to do that. We commend the Task Force for providing extensive detail in the minutes of the later sessions and for posting those minutes online. As to those minutes, we suggest only that the Task Force correct the erroneous reference to the March 17 meeting as its "first" so as to meet the implied requirement of the Act that

The Task Force further correctly assumes that its first meeting was subject to the Act's openness mandate, which applies "[e]xcept as otherwise expressly provided by [the Act]." *See* § 3-301. Although parts of the meeting may have involved logistical matters arguably within the Act's express exclusion of discussions within a public body's "administrative function," *see* § 3-103(a)(1), the agenda and briefing materials show that the purpose of the meeting was more substantive. The Act therefore applied to this public body and to its March 4 meeting.

minutes be accurate and to dissipate any perception that the Task Force intended to conceal the March 4 meeting.

We turn finally to the Task Force's compliance with the training requirement and to the Complainant's opinion that training should occur before a public body's first meeting. Although the Act leaves unclear the date by which a newly-created public body must designate an employee, member, or officer to take the training, it is clear that the individual must complete the training within 90 days of the designation. *See* § 3-213. Here, the designee took the training within 86 days. We acknowledge that an earlier awareness of the requirements of the Act might have avoided the scheduling of the March 4 meeting as an "internal" one and thus averted this complaint. However, we note that when the training requirement was enacted, the public bodies then in existence had six months in which to comply. *See* 2013 Laws of Md. ch. 213, § 2. With that in mind as a reference point, and with some question as to whether a new public body should be required to choose a trainee before it has even met, we find that the Task Force, which was first created on February 20, 2015, complied with the training requirement in a timely manner.

In summary, we have found that the Task Force violated the Act's notice, openness, and minutes requirements with regard to its March 4, 2015 meeting. We have commended the Task Force for the information that it is now providing online and advised it to come further into compliance by adopting minutes of the March 4 meeting and correcting the erroneous reference, in its minutes of the March 17 meeting, to that meeting as its "first." Finally, we found that the Task Force did not violate the training requirement. To that, we added that newly-created public bodies may avoid inadvertent violations of the Act by complying with the training requirement at the earliest opportunity.

Open Meetings Compliance Board

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